

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

JANE DOE,

Plaintiff,

v.

UNIVERSITY OF MICHIGAN, et al.,

Defendants.

Case No: 21-CV-12492

Hon. Robert H. Cleland
Magistrate Judge Elizabeth A. Stafford

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**DEFENDANTS' RESPONSE TO MOTION FOR A
PROTECTIVE ORDER TO USE A PSEUDONYM**

NOW COME Defendants, by and through the University of Michigan Office of the Vice President and General Counsel, and do hereby respond to the above titled motion as follows:

1. Defendants admit.
2. Defendants admit.
3. Defendants deny that the requested relief should be granted.
4. Defendants admit.

Respectfully submitted,

THE UNIVERSITY OF MICHIGAN
OFFICE OF THE VICE PRESIDENT &
GENERAL COUNSEL

By: /s/ Thomas L. Kent
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CERTIFICATE OF SERVICE

State of Michigan)
) ss
County of Washtenaw)

I hereby certify that on January 31, 2022, the foregoing document was electronically filed with the Clerk of the Court using the ECF system, which will send notification of such filing to all attorney(s) of record.

/s/Jennifer L. Traver
Jennifer L. Traver

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**DEFENDANTS' BRIEF IN RESPONSE TO PLAINTIFF'S MOTION FOR A
PROTECTIVE ORDER TO USE A PSEUDONYM**

I. BACKGROUND AND FACTS

Plaintiff filed her initial Complaint on October 22, 2021 without seeking leave to proceed pseudonymously. The parties agreed to a stipulation and order to allow Plaintiff to amend her Complaint. (ECF No. 6). Now, Plaintiff has filed an Amended Complaint and seeks through this motion to proceed as "Jane Doe."

This case involves a personal relationship Plaintiff had many years ago with Dr. Philip Schoenfeld who had a dry adjunct appointment at UM that ended in August, 2018. During the time of their personal relationship, Plaintiff had no programmatic or employment relationship with

UM. After the relationship ended, Plaintiff engaged in a campaign of ruinous and defamatory accusations against Dr. Schoenfeld that resulted in a defamation lawsuit against her. (*See*, Complaint and Counterclaim in California Superior Court, Ex. 1). As part of the resolution of that lawsuit, Plaintiff retracted, in a signed and notarized writing, the very allegations on which she now relies to support her claims against Defendants. By the terms of the resolution, Plaintiff's retraction was published to six UM employees. (*See*, Letters and Retraction, Ex 2).

Clearly, Plaintiff comes to this motion and to this litigation with the most unclean of hands. Her retractions are fatal to her Complaint, and Defendants intend to raise this and other defenses in an immediate Motion for Summary Judgment. But for purposes of this motion, Plaintiff cannot have it both ways. She cannot retract defamatory statements to resolve litigation against her, then use a federal forum to assert those same retracted statements against the very parties to whom she sent retraction letters. (Note that at least two of the persons who were sent retraction letters--Owyang and Seney--are named Defendants in this case.) UM respectfully requests that the Court not permit Plaintiff to benefit from this duplicity by proceeding anonymously in this litigation.

II. ARGUMENT

"As a general matter, a complaint must state the names of all parties. Fed.R.Civ.P. 10(a). However, [courts] may excuse plaintiffs from identifying themselves in certain circumstances." *Doe v. Porter*, 370 F.3d 558, 560 (6th Cir. 2004). "Several considerations determine whether a plaintiff's privacy interests substantially outweigh the presumption of open judicial proceedings. They include: (1) whether the plaintiffs seeking anonymity are suing to challenge governmental activity; (2) whether prosecution of the suit will compel the plaintiffs to disclose information 'of the utmost intimacy; (3) whether the litigation compels plaintiffs to disclose an intention to violate the law, thereby risking criminal prosecution; and (4) whether the plaintiffs are children." *Id.*

Plaintiff claims that this case “involves sexual information . . . of the utmost intimacy” and that she is the victim of “repeated sexual assault.” (PageID 33). In her Amended Complaint, Plaintiff alleges a sexual relationship with Dr. Schoenfeld from February 2013 through May 2013, refers to him as a “sexual predator,” accuses him of multiple rapes and states that he “coerced [her] into unsafe sexual practices” (PageID 43-45). Neither Plaintiff’s brief nor her Amended Complaint makes mention of the defamation lawsuit or the retractions she made as a result. Those retractions include, but are not limited to:

- Dr. Schoenfeld engaged in sex with me without my consent;
- Dr. Schoenfeld committed sexual assault as to, or raped, me;
- Dr. Schoenfeld violated University of Michigan policies in connection with me; and
- The University of Michigan determined that certain of Dr. Schoenfeld’s conduct as reported to the University by me, constituted sexual assault and/or sexual misconduct.

In her written retraction, Plaintiff admitted that her claims about Dr. Schoenfeld were “false and unjustified” and stated that she understood that her claims were defamatory and caused damage to Dr. Schoenfeld and his family. (Ex 2). Plaintiff has no privacy interest in an alternate reality, and perpetuating the alternate reality created by her false claims does not “substantially outweigh the presumption of open judicial proceedings.” *See, Porter* at 560.

Finally, this is a matter in which the Court has discretion to grant or deny the motion based upon the factors in *Doe v Porter*. Unlike motions under FRCP 56 or 12, this Court is not compelled to take Plaintiff’s Complaint at face value or view the facts in a light most favorable to her. Plaintiff is not a child. This litigation does not compel Plaintiff to disclose an intention to violate the law, and thus risk criminal prosecution. Plaintiff’s motion has not claimed a challenge to governmental activity. The only basis on which this motion is brought is that the facts disclose information of the “utmost intimacy,” and clearly this claim is false based on Plaintiff’s retraction

in Ex 2. Moreover, Plaintiff has not offered a sworn declaration under penalty of perjury to support her motion, as the risk to doing so seems obvious. Last, Plaintiff did not seek to proceed anonymously in the California defamation lawsuit against her, nor on her counter-claim, suggesting that the intimacy interest she now asserts is spurious at best.

For these reasons, Defendants request that this Honorable Court deny Plaintiff's Motion for a Protective Order to Use a Pseudonym.

Respectfully submitted,

THE UNIVERSITY OF MICHIGAN
OFFICE OF THE VICE PRESIDENT &
GENERAL COUNSEL

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/s/Jennifer L. Traver
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